IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 33769 of 2005(T)

AGAINST THE ORDER DATED 25/11/2005 IN IA.NO.1507/2005 IN OS.109/1999 of M.C.,PARAPPANANGADI

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PETITIONER:

ERANJIKKAL MUHAMMED HAJI,
S/O. AHAMMAD KUTTY, TIRURANGADI TALUK,
MUNNIYOOR AMSOM AND DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KOMATH
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SRI.V.S.ROBIN

RESPONDENT:

ABDULLA, S/O. LATE CHENARI CHAKKI
PARAMBATH VEERAN, TIRURANGADI TALUK,
MUNNIYOOR AMSOM AND DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
SRI.K.VINOD CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 33769/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.79/99 ON THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 20.7.1999 FILED BY DEFENDANTS 1 TO 3 IN O.S.NO.79/99 ON THE FILE OF THE COURT OF MUNSIFF OF PARAPPANANGADI.

EXT.P3: TRUE COPY OF THE PLAINT DATED 7.6.99 IN O.S.NO.109/99 ON THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

EXT.P4: TRUE COPY OF THE WRITTEN STATEMENT DATED 8.6.2000 FILED BY THE PETITIONER IN O.S.109/99 OF THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

EXT.P5: TRUE COPY OF THE AFFIDAVIT ACCOMPANYING THE I.A.NO.1507/05 IN O.S.NO.109/99 ON THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

EXT.P6: TRUE COPY OF THE COUNTER AFFIDAVIT DATED 17.11.2005 FILED BY THE RESPONDENT IN I.A.NO.1507 OF 2005 IN O.S.NO.109 OF 1999 ON THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

EXT.P7: TRUE COPY OF THE ORDER DATED 25.11.05 IN I.A.NO.1507/05 IN O.S.NO.109/05 ON THE FILE OF THE COURT OF THE MUNSIFF OF PARAPPANANGADI.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.33769 of 2005

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Dated: 20th August, 2007

JUDGMENT

Ext.P7 order by which the application filed by the defendants for amendment of the written statement was dismissed is under challenge in this Writ Petition under Article 227 of the Constitution. The suit was one for prohibitory injunction restraining the defendants from obstructing the B Schedule pathway. The bone of contention between the parties is the right of way over plaint B schedule pathway. According to the petitioner, after the petitioner and another witness was examined, it was noticed that mistakenly the right over plaint B schedule pathway is described as 'easement by prescription' in the written statement. The petitioner therefore filed I.A.No.1507 of 2005 to amend the written statement. The amendment sought for was to substitute the claim of easement by prescription by a claim of right of public way. The learned Munsiff has assigned two reasons for dismissing the application. The first one is that the trial of the suit has already commenced and no reasons are stated by the petitioner as to why the amendment could not be applied for earlier. The above reason cannot hold good in view of the principles laid down by me in **Neelakandan Nair v. Parameswara Kurup** (2003(2) KLT 943)

since it is clear that it is not the amended C.P.C. which governs the pleadings in this case. But the other reason stated by the learned Munsiff in my opinion is good. According to the petitioner, it was on account of the mistake committed by the clerk of the counsel that the plea of easement by prescription was originally taken. The learned Munsiff rightly found that in view of the specific pleadings taken in the original written statement regarding the nature of the right of way claimed as one for way easement by prescription, the case that the original pleadings are the result of mistake committed by the clerk cannot be accepted. There is yet another reason also as to why the impugned order is supportable. P.W.1 the principal witness and the Commissioner, P.W.2 had already been examined. The evidence adduced by them perhaps is of such a nature as to demolish the petitioner's case of easement by prescription. The petitioner would have realised that substantiating the case of easement by prescription will be almost an impossible exercise. The idea in filing the amendment application seems to be to have the pleadings amended so that the effect of evidence already adduced in the suit and the presently pleaded case can be got over. I do not think that

amendment of pleadings can be allowed to such an extent since the same will amount to causing irreparable prejudice to the adversary in the litigation.

The challenge against Ext.P7 fails. The Writ Petition will stand dismissed. Since the suit was already published in the special list, the learned Munsiff is directed to re-list the suit for trial and dispose of the same in accordance with law.

srd **PIUS C.KURIAKOSE, JUDGE**